

Office of Chief Counsel
Internal Revenue Service

memorandum

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date:

to: Chief, Examination Division, Southern California District
Attention: Lorna Fenton, CEP Case Manager
Melanie Fox, CEP Team Coordinator
Gerald Molina, CEP Team Coordinator
CE: 1103, Santa Ana

Audie Sturla, Group Manager, Employment Tax
Tony Lloren, Employment Tax Specialist
FE: 1417, Santa Ana

from: June Y. Bass, Associate Area Counsel, LMSB
Joyce M. Marr, Attorney

subject: Securing Forms SS-10 for
[REDACTED] (EIN: [REDACTED])
[REDACTED] (EIN: [REDACTED])
[REDACTED] (EIN: [REDACTED])
[REDACTED] (EIN: [REDACTED])
[REDACTED] (EIN: [REDACTED])

Years [REDACTED] through [REDACTED]

*****EXPEDITE*****

STATUTE OF LIMITATIONS DATE: [REDACTED]

THIS ADVICE CONSTITUTES RETURN INFORMATION SUBJECT TO I.R.C. § 6103. THIS ADVICE CONTAINS CONFIDENTIAL INFORMATION SUBJECT TO ATTORNEY-CLIENT AND DELIBERATIVE PROCESS PRIVILEGES AND IF PREPARED IN CONTEMPLATION OF LITIGATION, SUBJECT TO THE ATTORNEY WORK PRODUCT PRIVILEGE. ACCORDINGLY, THE EXAMINATION OR APPEALS RECIPIENT OF THIS DOCUMENT MAY PROVIDE IT ONLY TO THOSE PERSONS WHOSE OFFICIAL TAX ADMINISTRATION DUTIES WITH RESPECT TO THIS CASE REQUIRE SUCH DISCLOSURE. IN NO EVENT MAY THIS DOCUMENT BE PROVIDED TO EXAMINATION, APPEALS, OR OTHER PERSONS BEYOND THOSE SPECIFICALLY INDICATED IN THIS STATEMENT. THIS ADVICE MAY NOT BE DISCLOSED TO TAXPAYERS OR THEIR REPRESENTATIVES.

THIS ADVICE IS NOT BINDING ON EXAMINATION OR APPEALS AND IS NOT A FINAL CASE DETERMINATION. SUCH ADVICE IS ADVISORY AND DOES NOT RESOLVE SERVICE POSITION ON AN ISSUE OR PROVIDE THE BASIS FOR CLOSING A CASE. THE DETERMINATION OF THE SERVICE IN THE CASE IS TO BE MADE THROUGH THE EXERCISE OF THE INDEPENDENT JUDGMENT OF THE OFFICE WITH JURISDICTION OVER THE CASE.

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Pursuant to your request, the purpose of this memorandum is to discuss the proper caption to use on the Consents to Extend the Time to Assess Employment Taxes (Forms SS-10) for the employment tax liabilities of [REDACTED]'s subsidiaries referenced above for the years [REDACTED] through [REDACTED] inclusive.¹

ISSUES

1. What are the proper captions to use on Forms SS-10 to be secured for the subsidiaries referenced above.

FACTS²

According to [REDACTED] (EIN [REDACTED]), formerly known as [REDACTED] (hereinafter "[REDACTED]"), the present parent corporation of [REDACTED] (EIN XX) (formerly known as [REDACTED])³ and [REDACTED] (EIN: [REDACTED]), the following subsidiaries have been sold or otherwise transferred to third parties:

[REDACTED] (EIN: [REDACTED])
[REDACTED] (EIN: [REDACTED])
[REDACTED] (EIN: [REDACTED])
[REDACTED] (EIN: [REDACTED])

[REDACTED] has not provided the Service any information concerning whether the foregoing entities have undergone reorganizations, dissolutions, etc. after they were sold or otherwise transferred

¹ As discussed we are not opining at this time on the validity of the Form SS-10 currently in effect for the employment liabilities of the referenced subsidiaries. That issue will be addressed at a later time.

² Our advice is based on the facts as set forth below, which have been provided by Employment Tax Specialist Tony Lloren, except to the extent that we have obtained information from the attachments affixed hereto which were secured by us from the Service's computerized records or the LEXIS database. If the actual facts are different from those stated herein, our legal conclusions and recommendations might be different.

³As indicated in footnote one of our memorandum to you dated December 5, 2000, information on LEXIS indicates [REDACTED] was formerly known as [REDACTED].

to third parties.

1) [REDACTED] (EIN: [REDACTED])

In a Stock Purchase Agreement, dated [REDACTED], [REDACTED] agreed to sell all the issued and outstanding stock of [REDACTED] to [REDACTED]. A copy of the Stock Purchase Agreement is affixed hereto as Exhibit A.

Paragraph 10.2 of the Stock Purchase Agreement provides that upon the earlier of [REDACTED] or "the effective date [REDACTED] merges with [REDACTED] [i.e., [REDACTED], a [REDACTED] corporation], Buyer shall cause [REDACTED] of [REDACTED] to change its corporate name to one which does not include the word "[REDACTED]" or any other word or phrase which is confusingly similar"

Affixed hereto as Exhibit B are copies of printouts we have recently secured from the LEXIS database for two corporations incorporated in [REDACTED] with the name "[REDACTED]." Taking into consideration the preceding provision of the Stock Purchase Agreement, it appears from the LEXIS printouts and the ENMOD affixed hereto as Exhibit C for EIN [REDACTED] that: (1) [REDACTED] merged into [REDACTED] (EIN: [REDACTED]); and (2) then [REDACTED] changed its name to [REDACTED].

2) [REDACTED] (EIN: [REDACTED])

In a Stock Purchase Agreement, dated [REDACTED], [REDACTED] ([REDACTED]) agreed to sell all the issued and outstanding shares of stock of "[REDACTED], a [REDACTED] corporation, formerly known as [REDACTED]" to [REDACTED]. A copy of the Stock Purchase Agreement is affixed hereto as Exhibit D.

Paragraph 10.2 of the Stock Purchase Agreement provides "[w]ithin three (3) business days after the Closing, Buyer shall cause the Company to change its corporate name to one which does not include the word '[REDACTED]' or any other word or phrase confusingly similar to '[REDACTED]' or '[REDACTED]'."

Affixed hereto as Exhibit E is a copy of an ENMOD for EIN [REDACTED]. Based on this ENMOD, it appears that the name of [REDACTED] has been changed to [REDACTED]. This is confirmed by the copy of a Form 8-K filed by [REDACTED] on [REDACTED], and attached hereto as Exhibit F, which states in pertinent part:

On [REDACTED], [REDACTED] (the "[REDACTED]" or "[REDACTED]") sold all of the issued and outstanding stock of its wholly owned subsidiary, [REDACTED] (the "[REDACTED]"), to [REDACTED], a [REDACTED] limited liability company (the "buyer"). The buyer will operate the [REDACTED] as [REDACTED]. The sale of the [REDACTED] was effected by the Stock Purchase Agreement, dated [REDACTED], and amended as of [REDACTED], by and between [REDACTED], a wholly owned subsidiary of the [REDACTED], and the buyer.

Attached hereto as Exhibit G is a copy of a printout from the LEXIS data base for [REDACTED]. (Please note the mailing address on this printout corresponds with the address reflected on the ENMOD affixed hereto as Exhibit E.)

3) [REDACTED] (EIN: [REDACTED])

According to an Elections Under Section 338 for Corporations Making Qualified Stock Purchases (Form 8023), affixed hereto as Exhibit H, this corporation ([REDACTED]) was acquired on [REDACTED] by [REDACTED], a [REDACTED] corporation, located at [REDACTED].

Affixed hereto as Exhibits I and J are copies of an ENMOD and LEXIS printouts, respectively, which we recently secured for [REDACTED].

4) [REDACTED] (EIN: [REDACTED])

[REDACTED] is no longer part of the [REDACTED], as explained by the following excerpt from a Form 10-K/A of [REDACTED] for the year ended [REDACTED]:

ACQUISITION. On [REDACTED] we acquired [REDACTED] ("[REDACTED]"). Each outstanding share of [REDACTED]'s common stock was exchanged for \$[REDACTED] in cash, [REDACTED] shares of our Class A common stock and [REDACTED] shares of our Class B common stock. Each outstanding share of [REDACTED]'s preferred stock was exchanged for \$[REDACTED] in cash and [REDACTED] of one share of our Series A preferred stock. We paid approximately \$[REDACTED] in cash to [REDACTED]'s common and preferred shareholders.

The terms of the [REDACTED] acquisition required [REDACTED] to contribute \$ [REDACTED] to [REDACTED] (" [REDACTED] "), a wholly owned subsidiary of [REDACTED], increasing [REDACTED]'s net worth to approximately \$ [REDACTED] on [REDACTED]. Concurrently, [REDACTED] sold its investment in [REDACTED] in exchange for a \$ [REDACTED] non-recourse promissory note and rights to purchase shares of [REDACTED] common stock. Each former [REDACTED] shareholder received [REDACTED] rights. Holders of [REDACTED] rights were able to purchase [REDACTED] share of [REDACTED] common stock for each [REDACTED] right, for the subscription price of \$ [REDACTED] per share. Holders of [REDACTED] rights were entitled to subscribe for all, or any portion of, the shares of [REDACTED] common stock underlying their [REDACTED] rights, as well as to subscribe for any unallocated additional shares. In [REDACTED], [REDACTED] successfully completed its rights offering and shares of [REDACTED] common stock were distributed. Proceeds from the [REDACTED] rights offering were used to repay the non-recourse promissory note issued to [REDACTED].

Affixed hereto as Exhibit K and L are copies of an ENMOD and LEXIS printouts, respectively, which we recently secured for [REDACTED].

5) [REDACTED] (EIN: [REDACTED])

According to the taxpayer, [REDACTED] (EIN: [REDACTED]) is currently a subsidiary of [REDACTED] and has not undergone any reorganization or dissolution.

Affixed hereto as Exhibit M is an ENMOD which we recently obtained for [REDACTED] (EIN: [REDACTED]).

RECOMMENDATIONS

Based on our consideration of the information referred to above, we are of the opinion that:

(1) The Form SS-10 to be secured for [REDACTED] (EIN: [REDACTED]) should be captioned "[REDACTED] (EIN: [REDACTED]), formerly known as [REDACTED];"

(2) The Form SS-10 to be secured for [REDACTED] (EIN: [REDACTED]) should be captioned "[REDACTED] (EIN: [REDACTED]), formerly known as [REDACTED], formerly known as [REDACTED];"

(3) The Form SS-10 to be secured for [REDACTED]
[REDACTED] (EIN: [REDACTED]) should be captioned "[REDACTED]
Insurance Company (EIN: [REDACTED]);"

(4) The Form SS-10 to be secured for [REDACTED]
[REDACTED] (EIN: [REDACTED]) should be captioned
"[REDACTED] (EIN: [REDACTED]);" and

(5) The Form SS-10 to be secured from [REDACTED]
[REDACTED] (EIN: [REDACTED]) should be captioned "[REDACTED]
[REDACTED] (EIN: [REDACTED]), formerly known as [REDACTED]
[REDACTED], formerly known as [REDACTED]."

Our advice in this memorandum has been submitted to the
Office of Chief Counsel requesting post-review on an expedited
basis due to the imminent expiration of the statute of
limitations. If you have any questions, please contact attorney
Joyce M. Marr at 949-360-2688.